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No. 778

In the Supreme Court of the United States

OCTOBER TERM, 1968

FRANK KENT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY OF FRANK KENT, PETITIONER TO MEMORANDUM FOR UNITED STATES IN OPPOSITION

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Frank Kent, Petitioner, seeks to reverse the Judgment of the United States Court of Appeals for the Seventh Circuit, which affirmed the Judgment of the District Court, which denied his petition to vacate said judgment upon

the grounds that he was induced by the coercion of the District Court and the fraudulent promises of the District Court's Deputy Marshal.

Upon his plea to five misdemeanor counts the District Court imposed five consecutive nine month sentences for a total of forty-five months imprisonment and five cumulative fines of $500.00 each for a total of $2500.00.

The defendant had never before been arrested or convicted of any criminal offense. He was represented by a novice who had never prior to said trial appeared in a Federal Criminal case. Said defense counsel was himself coerced and over-awed by the District Court and thereupon recommended to Petitioner that he waive his right to proceed with the jury trial and plead guilty to said five counts.

The petitioner should not be deprived of his right to Certiorari through the inadvertent filing of the Petition for a Writ of Certiorari five hours beyond the due date as is hereinafter more fully set forth.

The within petition for a writ of Certiorari was due to be filed on November 25, 1968. The printing of said petition for a Writ of Certiorari was completed about 8:00 A.M. on November 25, 1968. The required number of copies were delivered, wrapped into a parcel, addressed to "Office of the Clerk of the Supreme Court of the United States, Washington, D.C. 20543". Said parcel was then personally delivered by Julius L. Sherwin, one of the petitioner's counsel, to the United States Post Office, at O'Hare Airport, Chicago, Illinois, at about 9:00 A.M. o'clock on November 25, 1968, and dispatched *Airmail, Special Delivery.* Said counsel was informed by the postal clerk to whom said parcel was delivered that said parcel would

arrive at the main Post Office in Washington, D. C., and from there delivered to the Office of the Clerk of this Court prior to midnight of November 25, 1968.

Being governed by the foregoing information, no request for an extension of time within which to file said petition for Certiorari made of this Honorable Court because in the opinion of said counsel an extension would not therefore be needed.

Upon receipt of the Memorandum for the United States in Opposition, said counsel telephoned the Office of the Clerk of the Supreme Court of the United States, to determine at what hour the Petition for a Writ of Certiorari was received in Washington, D.C. He was informed that the Petition for a Writ of Certiorari bore a time stamp of arrival at Washington, D. C. of "5:00 A.M., November 26, 1968." Thus, the Petition for a Writ of Certiorari was in point of time merely five (5) hours beyond the time within which it should have been filed.

The Petitioner herein relied entirely upon his counsel in the matter of timely filing of the Petition for a Writ of Certiorari. As above set forth, petitioner's counsel acting in good faith sought no extension of time for the filing of the Petition for a Writ of Certiorari in reliance upon the information supplied to him by the Postal Clerk at the Post Office, O'Hare Field, Chicago, Illinois, that the Petition for a Writ of Certiorari would be delivered in apt time for filing.

In the opinion of his counsel, the Petition for a Writ of Certiorari represents an important legal question, predicated upon a sound legal basis and upon a meritorious cause. The petitioner should not thereby be deprived of

this Court's consideration of his petition for a Writ of Certiorari by virtue of the lapse of five hours beyond the time for filing the same under the foregoing circumstances.

JULIUS L. SHERWIN, one of said Petitioner's Counsel, represents to this Honorable Court that the foregoing facts concerning the mailing of the Petition for a Writ of Certiorari, to be true and correct, of his own personal knowledge.

WHEREFORE Petitioner, by his counsel, humbly and respectfully prays that for the reasons herein stated, the Petition for a Writ of Certiorari be not dismissed nor denied by virtue of the five hour lapse in the time for filing the same. Petitioner further prays that this Honorable Court consider said Petition for a Writ of Certiorari upon the legal and factual grounds therein fully set forth.

Respectfully submitted,

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THEODORE R. SHERWIN
Attorneys for Petitioner